

September 1, 1987

REPORT TO THE HONORABLE

MAYOR AND CITY COUNCIL

RECENT LITIGATION - Robin Barnes v. City of San Diego

Superior Court Case No. 492007

Plaintiff was injured when a public toilet in Mission Bay Park collapsed while plaintiff was attempting to use it. Plaintiff filed suit in San Diego Superior Court alleging that the City maintained the toilet in a dangerous condition and that the City failed to have an adequate inspection system. The case was tried before a jury which returned a verdict in favor of the City.

FACTS

On January 11, 1982, at about 11:30 a.m., plaintiff was rollerskating in Mission Bay Park when she had occasion to use the restroom located just south of the Hilton Hotel. Plaintiff was 26 years of age and weighed 96 lbs. at the time. She testified that she walked into the restroom on the tips of her skates and carefully lowered herself onto the toilet. Shortly after she had seated herself on the toilet, she testified the toilet collapsed and she slid onto the floor.

The comfort station was constructed in 1968 and the toilets were installed the same year. The toilets in both the men's and the women's restrooms of the comfort station were made of porcelain by the Crane Company and were mounted to the wall to facilitate the cleaning of the floors.

An examination of the subject toilet revealed that a portion of the top surface of the toilet near the wall had previously been broken and that a crack extended from the broken piece into the flange which was mounted to the wall. Expert testimony disclosed that the existence of cracks or chips on ceramic material will weaken the entire unit and that a failure is possible when force is placed on the unit.

Plaintiff sustained two deep lacerations on her right buttocks as a result of being cut by the sharp, brittle fragments of porcelain. She lost a considerable amount of blood. She was hospitalized at Mission Bay Hospital and although the plastic surgeon who operated on plaintiff testified that the cuts were clean and healed nicely, plaintiff and her witnesses testified the injuries resulted in a permanent disability. Plaintiff's

doctors testified that plaintiff presently suffers from a chronic pain syndrome secondary to the accident and that the constant pain precludes plaintiff from sitting, standing or walking for any appreciable period of time. Plaintiff testified that she has been unable to pursue her chosen vocation of cosmetology due to her disabling injuries. Plaintiff produced evidence at the trial that the economic damages were close to \$1,000,000.00. Evidence produced by the City, however, tended to contradict much of the plaintiff's evidence.

#### LITIGATION

Plaintiff filed a timely claim with the City and filed a lawsuit in San Diego Superior Court against the City alleging that the subject toilet at the time and place of the accident constituted a "dangerous condition" of public property, that the City should have been aware of the prior damage to the toilet, and that the City should have replaced the toilet prior to plaintiff using it. Crane Company, the manufacturer of the toilet, was also named as a defendant in the lawsuit, but entered into a settlement agreement with plaintiff before the commencement of the trial.

The case proceeded to trial before a jury in the courtroom of the Honorable Carlos A. Cazares. After a ten (10) day trial, the jury returned a verdict on August 12, 1987, in favor of The City of San Diego.

Chief Deputy City Attorney Eugene P. Gordon tried the case on behalf of The City of San Diego.

Respectfully submitted,  
JOHN W. WITT  
City Attorney

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